
(2000) 03 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23200 of 1988

Sabri Begum

APPELLANT

Vs

Ist Addl. District Judge, Nainital and Others

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5

Citation : (2000) 03 AHC CK 0092

Hon'ble Judges : S.N. Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This petition is directed against the order dated 791988 whereby Respondent No. 1 allowed the revision and struck off the defence of the petitioner.

2. The plaintiffrespondent filed suit for recovery of arrears of rent, ejectment and damages against the petitioner. The petitioner filed written statement and denied the averments made in the plaint.

3. The plaintiffrespondent filed an application on 241987 to strike off the defence as the petitioner has not deposited the entire amount on the date of first hearing. The judge Small Causes Court rejected the said application on 1451987 on the finding that the defendantpetitioner has deposited the entire amount on the date of first hearing. The plaintiffrespondent filed revision against the said order. Respondent No. 1 allowed the revision by the impugned order dated 791988 and held that the petitioner did not deposit the amount on the date of first hearing and struck off the defence. The date of first hearing is the date when Court applies its mind in regard to facts in the case. The trial Court recorded a finding that the date fixed for filing written statement, it was adjourned and before the hearing could take place the petitioner had deposited the amount. The revisional Court took the view that the petitioner had not deposited monthly rent regularly and having not filed any representation in regard to that held that the defence was liable to be struck off. The petitioner has

filed Annexure 1A to the writ petition which is a copy of the representation before the trial Court. Respondent No. 1 ignored this representation. Sri Rajesh Tandon, learned Counsel for the petitioner, submitted that even though this representation may be considered but in this representation there is no explanation as to why the monthly rent was not deposited regularly in time. Firstly, Respondent No. 1 had not applied its mind to this representation. Secondly, it was open to the Judge Small Causes Court, considering the totality of the facts and circumstances of the case, not to strike off the defence. The trial Court having exercised its jurisdiction not to strike off the defence, Respondent No. 1 was not justified in striking off the defence of the petitioner in revision.

4. In view of the above the writ petition is allowed. The impugned order dated 791988 is hereby quashed. In the facts and circumstances of the case the parties shall bear their own costs.

As the suit was filed in the year 1986, it shall be decided within six months. The case shall not be normally adjourned and if very necessary to adjourn it not for more than one week.